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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1955.

No. 534.

IRA COLEMAN ROBERTS, BILLY O'NIEL HUGHES,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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No. .....

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PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Ira Coleman Roberts and Billy O'Niel Hughes, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered October 25, 1955.

STATEMENT OF JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1), Rules 21-33 of this Court, and Rule 37 (c) of the Federal Rules of Criminal Procedure.

OPINIONS OF THE COURT.

No opinion was filed in the District Court. The opinion of the Court of Appeals is printed herewith as an appendix to the Petition. A transcript of the record, including the judgment of the Court of Appeals, as required by the rules of this Court, accompanies the Petition.

QUESTIONS INVOLVED

I. Is Title 18, Section 1343, United States Code, a valid law?

II. Does the indictment in this case state an offense against the laws of the United States?

III. Whether the District Court of the United States for the Western District of Kentucky had jurisdiction to convict and sentence petitioners when the evidence established that any telephone communication or other interstate communication in furtherance of the alleged scheme to defraud was had between Lake Village, Arkansas, and Kansas City, Missouri.

IV. Whether or not a telephone conversation alleged in the indictment and sought to be proven was a step in the execution of the alleged fraudulent scheme.

V. Whether the evidence in this case shows an entrapment of Petitioners by Louis Cass, the alleged victim of the fraudulent scheme, and FBI agents in Paducah.

STATEMENT OF THE CASE.

Petitioners, Ira Coleman Roberts and Billy O'Niel Hughes, were indicted for violation of Section 1343, Title 18, United States Code, which reads as follows:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits, or causes to be transmitted by means of interstate wire, radio, or television communication, and writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

The indictment charges that petitioners in the Western District of Kentucky for the purpose of executing the aforesaid scheme and artifice and attempting to do so, communicated by sound, by way of interstate wire; that is, by telephone from Union City, Tennessee, to Dewey W. Cass, at Paducah, Kentucky.

Petitioners were convicted and received a sentence of five years each.

FACTS.

Dewey Cass, a landscape gardener, met appellants at the Irvin Cobb Hotel in Paducah, Kentucky, on September 3, 1954. Prior to this meeting, he had received a telephone call from a person who gave his name as "Mr. Walker," this call being placed from Willow Springs, Missouri (R. 4-5, App. 4a-5a). Walker reported to the witness that Wilson had 160 acres of bluegrass sod at the Milbourn Golf Course in Kansas City, Missouri (R. 6, App. 6a), and made an arrangement to go out and look over this grass, which he did.

The witness agreed to pay $7,000 for this sod, but became suspicious and communicated with the office of the FBI in Kansas City, but was informed that no crime had been committed (R. 10, App. 10a). Cass then agreed, in response from a telephone call from Lake Village, Arkansas, that he would purchase the sod for $3,500 cash and give his note for an equal amount (R. 11-12, App. 11a-12a).

In accordance with this agreement, Cass went to the Irvin Cobb Hotel in Paducah and arranged with an FBI agent to come to the Irvin Cobb Hotel and take a room adjoining that of the witness (R. 13, App. 13a). Appellants met Cass there and one of them proceeded to write out a note for $3,000 for bluegrass sod and Cass signed it. The witness requested that the receipt also be signed by Wilson (R. 14, App. 14a). Cass testified appellant Hughes was the man who identified himself as Walker and Wilson identified himself as Roberts.

The note and the receipt were both written out by Walker (Hughes) and the note signed by Cass and introduced as Government Exhibit 1 reads as follows:

> "I, Dewey Cass, hereby agree to pay me $3,000. 9-3-55" (R. 15, App. 15a).

Cass further testified that as he signed the note Wilson signed the receipt for $4,000, and the witness told him that he would like to have a friend next door look over the papers to find out if they were legitimate, and, when he said this, Wilson (Roberts) proceeded to tear up the receipt for $4,000, ran into the bathroom and flushed it down the toilet, and while this occurred that witness called the FBI agent (R. 16-17, App. 16a).

Cass further testified that one of appellants, he did not know which one, called him from Union City and said that they would be late in keeping their appointment with him in Paducah (R. 16, App. 16a). Cass further testified

that Walker and Wilson introduced themselves when they came into his room at the Irvin Cobb Hotel (R. 19, App. 19a).

Cass came to Paducah as the result of an "arrangement" that he made on the phone from Lake Village, Arkansas, to Kansas City, Missouri (A. 20a). With reference to the telephone conversation from Lake Village, Arkansas, to Kansas City, Missouri, Cass thus testified:

> "Q. Now, then, the only calls that you got that you say were from Mr. Wilson was from Lake Village, Arkansas, to Kansas City, Missouri, is that correct?
>
> A. If that's what the papers say, that's probably correct.
>
> Q. That's correct. All right. Now, then, you had never heard the voice—the man's voice, or the man had never talked to you person to person before that phone call, had he, Mr. Cass?
>
> A. That's right.
>
> Q. Then you don't know who it was talking to you on the phone from Lake Village, Arkansas, to Kansas City, Missouri, do you?
>
> A. All I could go by is what the man said. If he identified himself as Mr. Wilson, naturally, I assume I was talking to Mr. Wilson.
>
> Q. He said, 'My name is Mr. Wilson.' Did you know any Mr. Wilson at Lake Village, Arkansas?
>
> A. I don't know anybody in Lake Village, Arkansas.
>
> Q. Then, in fact, you didn't know who you were talking to at that time?
>
> By the Court: He said he didn't know, except what the party said.
>
> Q. Well, except what he said, that he was Mr. Wilson?
>
> A. Well, that's right; of course" (A. 18a, 19a).

REASONS WHY THE WRIT SHOULD BE GRANTED.

I.

The validity of Title 18, Section 1343, of the United States Code, is challenged on the ground that it is not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.

Connally v. General Construction Company, 269 U. S. 385;
Lanzetti v. New Jersey, 306 U. S. 451, 453.

Obviously, the Statute under consideration was intended to apply the principle of the Mail Fraud Statute to the communications included in Section 1343, but the situations are not parallel.

The Mail Fraud Statute deals with matter deposited in or delivered by the postal establishment, an agency of the United States Government. It deals with tangible objects. In the Mail Fraud Statute, the letter or document must have some relation to, or connection with, the alleged scheme to defraud and must be a step in its attempted execution.

McLendon v. U. S., 6th Cir., 2 F. 2d 650;
Barnes v. U. S., 8th Cir., 25 F. 2d 61, 64;
United States v. Berg, 3rd Cir., 143 F. 2d 173;
United States v. McKay, 45 F. Supp. 1001-1005.

Under the Mail Fraud Statute, the venue may be either at the place where the document is mailed or where it is received. This narrows its operation within reasonable limits. Section 1343 has a sweep as broad as the communi-

cation system of the United States. Pictures may be transmitted by wire from New York to San Francisco. Does the Statute confer jurisdiction upon any State through which these pictures are transmitted? A television program instituted in Boston may be seen by spectators on the Southern Gulf or Pacific Coast. Does jurisdiction to impose the penalties prescribed by Section 1343 vest in any place where the televised program may be observed? The same question might be asked with respect to telegrams or signals, and there is no definition of the word "sounds" as used in the Statute. The Court of Appeals in its Opinion (page 2) says that the "word 'sounds' must be considered together with their transmission by means of interstate wires, radio or television communication. So considered, the word is restricted in scope and there is no necessity for a man of common intelligence to guess at its meaning or to have any doubt about it including the voice or speech of a human being." But is it restricted to the voice of a human being? So to hold is to write something in the Statute that is not there.

It may be that the doctrine of state rights is an antiquated concept and the Tenth Amendment a deadletter. If not, it will soon become such if statutes of the character under consideration are upheld by the Federal Courts.

In a Mail Fraud case, the accused may be confronted with the offending document and the jury allowed to consider whether it has any relation to, or is a step in the execution of, the alleged fraudulent scheme. But how may the rights of the accused be protected by an interpretation of "Signs, signals, pictures, or sounds" and the relation thereof to the alleged fraudulent scheme? At any rate, the Statute opens a wide field for speculation that may readily prove destructive of the rights of individuals guaranteed by the due process clauses of the Federal Constitution.

Amendment Six to the Federal Constitution provides that, "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law * * *."

Under Section 1343, **where is the venue** of the offense denounced by the Statute?

Does the Federal Court in any District, through which a telegram is transmitted or where the long-distance wires are used in conveying a transcontinental message, have jurisdiction to try the offender?

II.

It is a "Fundamental concept of common law that crime must be defined with appropriate definiteness."

Pierce v. U. S., 314 U. S. 306.

When consideration is had of the fact that the basis of the jurisdiction of the Federal Court over the offense denounced by the Statute rests upon the use of interstate means of communication, it is clear of doubt that the Statute not does meet the test stated in **Pierce v. U. S.**, supra. Statutory defects may not be cured by an indictment restricting the venue or limiting the scope of the indictment. It is not what is done but what may be done under a statute that determines its validity.

Bailey v. Alabama, 219 U. S. 219.

III.

It should be kept in mind that the consummation of the fraudulent scheme denounced by this Statute is not an essential element of the offense. It is complete when the offender devises or intends to devise a scheme or

artifice to defraud and causes to be transmitted the matters set out in the Statute. In the instant case, the offense was completed when arrangements were made in a telephone conversation between Lake Village, Arkansas, and Kansas City, Missouri, for the meeting between Cass and Petitioners in Paducah. If they had never gone to Paducah and the Statute is valid, jurisdiction to punish the offense could have been exercised by either a Federal Court in Arkansas or in Missouri. The Statute does not suggest multiple offenses and if the offense was completed by a telephone conversation between Lake Village, Arkansas, and Kansas City, Missouri (A. 18a), how could the Kentucky Courts be given jurisdiction of that offense by a telephone conversation which simply stated that the parties would be late in reaching Paducah? We think the principle applied in **Kann v. U. S.**, 323 U. S. 88, is applicable here. In that case it was held that the Federal Mail Fraud Statute does not purport to reach all frauds, but only those limited instances in which use of the mail is an integral part of the execution of fraud, leaving all other cases to be dealt with by appropriate State Law. It is also held in that case that the mailing must be for the purpose of executing the fraud and that a mailing after its consummation did not constitute a violation of this Statute.

IV.

Cass did not expect to carry out the agreement made in the telephone conversation from Lake Village, Arkansas, to Kansas City, Missouri (A. 21a). His only purpose in having Petitioners or anyone else come to Paducah was to trap them with the aid of the Federal Bureau of Investigation. If this does not constitute entrapment, it borders so close thereon as to justify its inclusion in this petition and a full discussion thereof if the petition should be granted.

PRAYER.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this court, directed to the Court of Appeals for the Sixth Judicial Circuit, commanding that court to certify and send to this court for its review and determination on the day certain to be therein named, a full and complete transcript of the record and proceedings in the case entitled on its docket, Ira Coleman Roberts, Billy O'Niel Hughes, Appellants, vs. The United States of America, Appellee, No. 12,411, to the end that said case may be reviewed and determined by this court as provided by 28 U. S. C., Sec. 1254, and the applicable rules promulgated by this court governing applications for certiorari in criminal cases, and that the judgment of the Court of Appeals be reversed by this honorable court, and that petitioners may have such other and further relief in the premises as to this honorable court may seem right and proper.

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OPINION.

(Filed Oct. 25, 1955. Carl W. Reuss, Clerk.)

No. 12411.

UNITED STATES COURT OF APPEALS.

For the Sixth Circuit.

Ira Coleman Roberts, Billy O'Niel Hughes,
Appellants,

v.

The United States of America,
Appellee.

} Appeal from the District Court of the United States for the Western District of Kentucky.

Decided October 25, 1955.

Before Allen, McAllister and Miller, Circuit Judges.

Miller, Circuit Judge. Appellants, Ira Coleman Roberts and Billy O'Niel Hughes, were indicted for use of an interstate telephone call for the purpose of executing a scheme to defraud, in violation of Section 1343, Title 18, U. S. Code. Following trial by jury and a verdict of guilty, they received sentences of five years and three years respectively, from which these appeals were taken.

Section 1343, Title 18, U. S. Code, enacted July 16, 1952, provides as follows:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or

causes to be transmitted by means of interstate wire, radio, or television communication, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

Appellants attack the constitutionality of the statute on the ground that it prescribes no rule by which to determine the nature of the "sounds" referred to in the statute, and as a consequence is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, with the result that it is not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. **Connally v. General Construction Co.**, 269 U. S. 385, 391. The general principle relied upon by appellants is well recognized. The authorities cited by appellants, while supporting the general principle, have no material bearing upon the particular statute herein involved. In fact, due to its recent enactment, counsel have been able to find but one reported case under it, namely, **Wiltsey v. United States**, 222 F. (2d) 600, C. A. 4th, decided May 26, 1955, in which a judgment of conviction was affirmed without discussion of the question of constitutionality.

We are of the opinion that the statute does not violate the constitutional principle relied upon. The word "sounds" must be considered together with their transmission by means of interstate wire, radio or television communication. So considered, the word is restricted in scope, and there is no necessity for a man of common intelligence to guess at its meaning or to have any doubt about it including the voice or speech of a human being. **Nash v. United States**, 229 U. S. 373, 376-378; **Fox v. Washington**, 236 U. S. 273, 277-278.

The indictment charged that the appellants, prior to August 23, 1954, and continuing to September 3, 1954, de-

vised a scheme to defraud one Dewey W. Cass, who was a landscape gardener in Kansas City, Missouri, by falsely representing that they owned and had authority to sell 160 acres of blue grass sod, and that on September 3, 1954, "for the purpose of executing the aforesaid scheme and artifice and attempting to do so, communicated by sound, by way of interstate wire; that is, by telephone from Union City, Tennessee, to Dewey W. Cass at Paducah, Kentucky." We find no merit in appellants' contention that the indictment fails to charge the scheme with such particularity as is essential to acquaint the accused with reasonable certainty of the nature of the accusation against him, as required under the Fifth and Sixth Amendments to the Constitution.

Appellants also contend that the District Court lacked jurisdiction to try and convict them because there was no evidence that the appellants were ever in Union City, Tennessee, or telephoned Cass from that point as alleged in the indictment. It is true that no witness testified that he saw either of the appellants in Union City, Tennessee. However, such testimony was not necessary. The uncontradicted testimony of Cass and the records of the Telephone Company established without question that a telephone call was made from Union City, Tennessee, to Cass at his hotel room in Paducah, Kentucky, on September 3, 1954. Additional circumstantial evidence, which we think is unnecessary to here review, in our opinion, proved without question that such telephone call was made by one of the appellants. It is settled law that one who aids or assists another in the commission of a criminal act is equally guilty as a principal with the one whom he so assists or abets in the commission of the wrongful act. Section 2, Title 18, U. S. Code.

Appellants also contend that the evidence did not show that the alleged telephone call was in furtherance of the scheme to defraud. The evidence showed that the appel-

lants had previously arranged with Cass to meet him at a hotel in Paducah, Kentucky, at a designated time on September 3, 1954, for the purpose of closing the deal and making the agreed cash payment; that appellants were delayed in keeping the appointment; and that the telephone call was made for the purpose of advising Cass of the delay and to request him to wait for their later arrival. In our opinion, the telephone call was in furtherance of the scheme to defraud and was sufficient to sustain such allegation of the indictment.

The judgments are affirmed.

Judgment.

Appeal From the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court in this cause be and the same are hereby affirmed.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 534

IRA COLEMAN ROBERTS AND BILLY O'NIEL HUGHES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 11–14) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 25, 1955 (Pet. 11, 14). The petition for a writ of certiorari was filed on November 22, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the federal statute making it a crime to transmit sounds by interstate wire for

the purpose of furthering a scheme to defraud is void for vagueness.

2. Whether, where petitioners had arranged by interstate telephone call to meet the victim to consummate a fraudulent sale, their later interstate call asking that he await their delayed arrival was in furtherance of the scheme to defraud.

3. Whether there was illegal entrapment because the victim did not intend to consummate the fraudulent sale, where the criminal design originated in the minds of petitioners and was carried out by them entirely on their own initiative.

STATUTE INVOLVED

Section 18 (a) of the Act of July 16, 1952, 66 Stat. 711, 722, amending the Communications Act of 1934, 18 U. S. C. 1343, provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of interstate wire, radio, or television communication, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioners were convicted in the United States District Court for the Western District of Ken-

tucky under a one-count indictment charging violation of 18 U. S. C. 1343, *supra*, in that they had devised a scheme to defraud one Cass by making false representations that they owned and had authority to sell 160 acres of bluegrass sod. The indictment alleged that, for the purpose of executing this scheme, petitioners made an interstate telephone call from Union City, Tennessee, to Cass at Paducah, Kentucky. (R. 1–3.) Petitioner Roberts was sentenced to imprisonment for a period of five years and petitioner Hughes was sentenced to three years (R. 2–3; Pet. 11). On appeal, the judgment was unanimously affirmed (Pet. 14).

The evidence may be summarized as follows:

Dewey Cass was a landscape gardener at Kansas City, Missouri (R. 3–4). On August 23, 1954, a Mr. Walker (petitioner Hughes) phoned from Willow Springs, Missouri, to inform Cass that a Mr. Wilson (petitioner Roberts), Walker's boss, had 160 acres of bluegrass sod for sale for $12,500, and told Cass that the sod could be seen at the Milburn Golf Course in Kansas City, Kansas (R. 5–6).[1] Later Cass received a number of other phone calls from Lake Village, Arkansas, in some of which he spoke to Walker, and in others to Wilson (R. 7–8, 10, 19).

After viewing the golf course on Walker's

[1] The president of the golf club testified that the club did not have any sod for sale during August or September 1954, and that he did not know either of the petitioners (R. 26).

persistent urging, Cass told Walker in a phone conversation that he could pay $7,000 for the sod, and Walker stated that he thought Wilson would accept this (R. 6–7). When Wilson phoned telling Cass to bring the $7,000 cash to Lake Village, Arkansas, Cass stated that he wanted to talk to his banker first. The banker learned that, contrary to representations made by petitioners to Cass, the Milburn Country Club was not planning to subdivide its land for home building sales. (R. 7–8.) Suspecting an attempted fraud, Cass notified the F. B. I. in Kansas City, but was informed that no crime had been committed (R. 9, 20).

One of the petitioners, in a telephone conversation from Lake Village, Arkansas, told Cass to meet them at the Irvin Cobb Hotel in Paducah, Kentucky, on September 3 at 4:00 p. m., at which time Cass was to pay $3,500 in cash and execute a $3,500 promissory note for the balance (R. 9–10). When Cass arrived at the hotel in Paducah on that date, he telephoned the F. B. I. and an agent was stationed in the room next to his (R. 11, 20–21, 34–35).

Cass testified that at about 4:30 p. m., either Walker or Wilson telephoned from Union City, Tennessee, apologized for being late, and promised that they would reach Paducah for their appointment in about two hours (R. 10–11, 14, 21). The F. B. I. agent, who listened in on this

conversation, stated that he heard a voice say, "I am Mr. Walker. We're in Union City" (R. 35). Telephone company records confirmed the fact that this interstate call had been made to Cass from a public phone booth in a hotel in Union City (R. 27–28).

At about 7:00 p. m., the two petitioners arrived at Cass' hotel room and introduced themselves as Mr. Walker and Mr. Wilson (R. 11, 15, 35). When Cass stated that he had $4,000 in cash, Walker wrote out a receipt for this amount and a $3,000 promissory note for Cass to sign (R. 11–12). As Cass signed the note, Wilson signed the receipt. Cass then stated, "Now, I've got a friend here next door I'd like to look these papers over to find out if they are legitimate." Wilson immediately tore up the receipt and flushed it down the toilet. (R. 13, 42–43.) The F. B. I. agent entered the room, and petitioners were both arrested (R. 36, 40).

Walker told the agent that the only town in which he stopped on his automobile trip from Memphis to Paducah was Dyersburg, Tennesseee, and denied that the brief case in his possession was his. In the brief case, the agent found the $3,000 promissory note Cass had signed, and another receipt typed on stationery of the Colonel Dyer Restaurant of Dyersburg, Tennessee, reading as follows: "Received from Dewey Cass, thirty-five hundred dollars. Balance due, thirty-

five hundred dollars. 9–3–55. I, Dewey Cass, hereby agree to pay thirty-five hundred dollars as balance on grass, due September 3, 1955." (R. 37–38.) A waitress testified that she had typed this document for two men at this restaurant. She recognized petitioners as these men from pictures shown to her by an F. B. I. agent, but not from seeing them in the restaurant (R. 29–32).

ARGUMENT

1. Petitioners' principal contention (Pet. 6–8) is that 18 U. S. C. 1343 (*supra*, p. 2) is void for vagueness under *Connally* v. *General Construction Co.*, 269 U. S. 385, and *Lanzetta* v. *New Jersey*, 306 U. S. 451, because, they say, it is not sufficiently explicit to inform persons subject to it what conduct on their part will render them liable to its penalties. As the court below held, however (Pet. 12–13), the contention lacks substance.

While there is no definition in the statute of the word "sounds," it is a word of commonly understood usage, and when read in context, it is obviously restricted to noises made on "interstate wire, radio, or television." The language challenged "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices," and the Constitution requires no more. *United States* v. *Petrillo*, 332 U. S. 1, 7–8. Cf. *Kovacs* v. *Cooper*, 336 U. S. 77, 79–80, holding sufficiently definite an ordinance which proscribed the use or opera-

tion on a public street of a "sound truck" or any instrument emitting "loud and raucous noises" attached to a vehicle on public streets.

If the statute is "construed as going no farther than it is necessary to go in order to bring the defendant within it, there is no trouble with it for want of definiteness." *Fox* v. *Washington,* 236 U. S. 273, 277. Petitioners as men of common intelligence could know, without necessity of guesswork, from the terms of the statute that it included their telephone call over an interstate wire for the purpose of executing their scheme to defraud. The fact that there may possibly be borderline or marginal cases under the statute at some future time is no ground for disturbing the convictions here, where the conduct in question falls unmistakably within the statutory terms. *United States* v. *Petrillo, supra,* 332 U. S. at 7.

Petitioners complain under their constitutional argument (Pet. 7) that in a mail fraud case,[2] the accused's rights are protected since he may be confronted with the offending document and the jury may consider whether it has any relation to the fraudulent scheme, but that this is not true under 18 U. S. C. 1343. The testimony, however, disclosed the substance of the telephone conversation

[2] The mail fraud statute (18 U. S. C. 1341), the constitutionality of which petitioners concede by implication, is substantially identical in language with 18 U. S. C. 1343, except that it denounces use of the mails to defraud instead of the use of interstate wires.

(R. 10–11, 14–15, 21, 35) so that petitioners could have denied or explained it had they chosen to do so; and it was for the jurors to decide whether the phone call was in furtherance of the fraudulent scheme (R. 48).

Equally untenable is the suggestion (Pet. 8) that there is a problem of vagueness in determining where venue lies for an offense under Section 1343. There is actually no difficulty as to venue, which was properly laid under the general venue statute, 18 U. S. C. 3237,[3] in the United States District Court for the Western District of Kentucky, the place where the proscribed telephone conversation was completed. Cf. *Goodloe* v. *United States*, 188 F. 2d 621, 622 (C. A. D. C.), certiorari denied, 342 U. S. 819.

2. Petitioners contend (Pet. 2, 8–9) that the telephone call charged in the indictment was not in furtherance of the fraudulent scheme, arguing that the offense was complete when arrangements were made in the phone call from Lake Village, Arkansas, to Kansas City, Missouri, for the meeting between Cass and petitioners in Paducah. The scheme, however, clearly did not reach fruition until petitioners received the money which was the object of the fraud. The

[3] "Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed. * * *"

call set forth in the indictment from Union City to Paducah was in furtherance of the scheme to defraud, since petitioners were making certain that Cass would not leave the hotel in the belief that they would not arrive and that the proposed deal was off. The purpose of the call was to prevent action by Cass which would have interfered with petitioners' attempt to consummate their fraudulent scheme. Cf. *Wiltsey* v. *United States*, 222 F. 2d 600, 601 (C. A. 4). It was not merely an incidental courtesy call of apology for delay.[4]

There is manifestly nothing in 18 U. S. C. 1343 warranting the argument that because the earlier call may have violated the statute, petitioners could not be prosecuted for the later call of which they were found guilty. Each transmission by means of interstate wire, radio, or television communication for the purpose of executing the fraudulent scheme is a separate offense. Cf. *In re Henry*, 123 U. S. 372; *Nelson* v. *United States*, 178 F. 2d 458 (C. A. 9); *Weiss* v. *United States*, 122 F. 2d 675, 680–681 (C. A. 5), certiorari denied, 314 U. S. 687. Granted that the telephone conversation from Lake Village arranging

[4] *Kann* v. *United States*, 323 U. S. 88 (see Pet. 9), is clearly distinguishable, expressly holding (at p. 95) that "one element of the offense defined by the [mail fraud] statute, namely, that the mailing must be for the purpose of executing the fraud, is lacking in the present case." By contrast, in the instant case, the telephone conversation was clearly in furtherance of the execution of the fraudulent scheme.

the Paducah meeting was an offense under the statute, it was not exclusive so as to preclude prosecution for the offense charged in the indictment.

3. Finally, petitioners make a cursory suggestion that their convictions were invalid by reason of entrapment, since Cass had no intention of actually carrying out the agreement for purchase of the sod, and journeyed to Paducah for the sole purpose of trapping them with the assistance of the F. B. I. (Pet. 2, 9). The record, however, clearly establishes that the fraudulent scheme had its genesis with petitioners, without instigation by government agents or Cass (see Statement, *supra*, pp. 3–5). The F. B. I. merely responded to the call of Cass to apprehend petitioners after commission of a crime on which they had already embarked through their own uninfluenced decision. There was no entrapment. See *Sorrells* v. *United States*, 287 U. S. 435, 441–42.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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